



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01782

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

03/08/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On June 28, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs), effective June 8, 2017, by Directive 4 of the Security Executive Agent Directive (SEAD 4), dated December 10, 2016, entitled *National Security Adjudicative Guidelines* for all covered individuals who

require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.

Applicant responded to the SOR on June 27, 2017, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on September 15, 2017. He did not supplement the record. The case was assigned to me on December 19, 2017.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated 16 delinquent debts exceeding \$14,000 and (b) incurred a personal judgment in 2009 in the amount of \$2,062. Allegedly, these debts have not been addressed and remain outstanding.

Under Guideline E, Applicant allegedly falsified his electronics questionnaires for investigations processing (e-QIP) by omitting the judgment debt covered by SOR ¶ 1.q. Allegedly, this judgment debt belongs to Applicant.

In his response to the SOR, Applicant admitted most of the alleged debts with explanations. He denied only the SOR creditor ¶ 1.q judgment, claiming the judgment debt belongs to his father who has the same name and recently passed away. Applicant claimed he has experienced financial hardships with his employer's restructuring and receives less overtime pay. He claimed he has two kids in college and had one of his student loan lenders garnish his pay. He also claimed he has borrowed from his 401k retirement account and worked with his student loan creditor to reduce the amount of his monthly garnishment.

Addressing the allegations covered by SOR ¶ 2.a, Applicant denied falsifying his e-QIP with explanations. He claimed the alleged omission covers the SOR ¶ 1.q judgment debt that does not belong to him. He claimed he contacted the SOR ¶ 1.q creditor in an effort to delete the judgment debt from his credit report, but with no success.

Findings of Fact

Applicant is a 49-year-old engineering technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in March 1997 and has two children from this marriage. (Items 3 and 5) He earned an associate's degree in March 2002. (Item 3) He enlisted in the Navy in May 1989 and served four years of active duty before receiving an honorable discharge in May 1993. (Items 3 and 5) Between February 1997 and December 2005, he served in the Active Navy Reserve. In December 2005, Applicant transferred to the Inactive Navy

Reserve and served three years before he was honorably discharged in December 2008. (Items 3 and 5)

Since March 2005, Applicant has worked for his current employer. (Items 3 and 5) Between January 1997 and March 2005, he was employed by other employers, some of whom were federal contractors. (Items 3 and 5)

Applicant's finances

Between 2015 and 2017, Applicant accumulated 17 delinquent student loan, medical, and consumer debts exceeding \$13,000. (Items 2-6) One of his listed consumer debts (SOR debt ¶ 1.q) is a judgment entered in December 2009 in the amount of \$2,061. (Items 4-5 and 7) He claimed this judgment covers his father who has the same name as Applicant, and who is now deceased. (Item 2) He provided no written evidence to document his claims, without which the judgment cannot be resolved favorably to Applicant. (Items 2-5)

Records confirm that one of Applicant's six private student loan debts (SOR ¶¶ 1a-1.b, 1.d, and 1.f-1.h) was covered by a wage garnishment order issued in January 2017. (Item 6) The garnishment was initially set for 15% per paycheck by the court overseeing the garnishment initiative, but has since been reduced to 5% per pay check. (Items 2-6) An incident report produced by the Joint Personnel Adjudication System (JPAS) confirmed that the student loans covered by the garnishment order originated from Applicant's privately held loans. (Item 6)

Applicant attributed his delinquent debts to financial hardships associated with his employer's restructuring in 2016, which resulted in his generating less income from overtime work for the entire year of 2016. (Items 2-4 and 7) In an interview with an investigator from the Office of Personnel Management in January 2017, he told the investigator that his situation is slowly improving with his resumed overtime pay, and he is "trying to get his bills paid current and paid off." (Item 5)

Applicant's credit reports reveal that Applicant is current with most of his reported accounts. (Items 4 and 7) To date, though, he has not provided any probative evidence of his voluntarily addressing any of his listed debts. He has not sought financial counseling or debt consolidation. And he offered no specific payment plans to the OPM investigator who interviewed him in January 2017. (Item 5)

E-QIP omissions

Asked to complete an e-QIP in June 2016, Applicant omitted a listed judgment taken by SOR creditor ¶ 1.q against him in 2009 in the amount of \$2,061. (Items 4-6) Applicant has consistently disputed this judgment as a judgment belonging to his father, who has since passed away. (Items 2 and 5). While he did not provide any documentary proof of the judgment error and ensuing reporting mistake, his explanations are plausible and credible enough for acceptance.

Policies

The SEAD 4, Appendix (App.) 4 lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse of

dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Personal Conduct

The Concern. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicating processes AG ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's delinquent debts. Applicant's accumulation of multiple debt delinquencies over a four-year period warrant the application of three of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), "inability to satisfy debts," DC ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," and DC ¶ 19(c), "a history of not meeting financial obligations,"

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant's delinquent debts merit some application of MC ¶ 20(b). MC ¶ 20(b) extenuates financial concerns where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances."

In Applicant's case, he attributed his debts (especially his student loan delinquencies) to reduced overtime pay. Without more detail about his debts and the circumstances in which they arose, his explanations are insufficient to enable him to take full advantage of MC ¶ 20(b).

Applicant's unresolved debt delinquencies prevent him from meeting the Appeal Board's requirements for demonstrating financial stability. See ISCR Case No. 07-06482 (App. Bd. May 21 2008); see also ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

Personal conduct concerns

Applicant's omission of an adverse judgment entered against him in December 2009 raised initial security concerns about his trustworthiness and reliability. However, he persuasively demonstrated that the judgment belonged to his father who has the same name and has since passed away. Allegations that Applicant falsified his e-QIP are unsubstantiated.

Whole-person assessment

From a whole-person standpoint, Applicant's contributions to the defense industry over the course of his lengthy employment with his current contractor are

considerable and worthy of respect. They are not enough, though, to overcome security concerns associated with his history of accumulating delinquent debts with no documented evidence of his voluntarily working with his creditors and making concerted efforts to address them after they became delinquent. His delinquent debts remain a source of trust concern.

Considering all of the circumstances surrounding Applicant's debt accruals and failure to address them when circumstances permitted, his actions to date in dealing with his SOR debts are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to the allegations covered by SOR debts ¶¶ 1.a-1.p of Guideline F. Favorable conclusions are warranted with respect to subparagraph 1.q of guideline F and the allegations covered by the personal conduct guideline.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a-1.p:	Against Applicant
Subpara. 1.q:	For Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subpara. 2.a:	For Applicant
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Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

